**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

**Special Appeal No.63 of 2005**

1. General manager, Kumaon Jal Sansthan, Nainital, Uttaranchal
2. Secretary, Local Bodies, Uttaranchal Govt. Dehradun

**.....Appellants**

Versus

Smt. Laxmi Devi
W/o late Sri Balam Singh (Chaukidar Beldar)
R/o Village Syura, P.O. Hirakhan, District Nainital

**.... Respondent**

**Shri J.P. Joshi, learned counsel for the appellants.**
**Shri R.S. Sammal, learned counsel for the respondent.**

**Coram: Hon'ble P.C. Verma, J.**
**Hon'ble B.C. Kandpal, J.**

1. This special appeal arises out against the judgment and order dated 09.05.2005 passed by learned Single Judge in Writ Petition No. 1119 (S/S) of 2002, Smt. Laxmi Devi Vs. General manager, Kumaon Jal Sansthan, Nainital and others, whereby the writ petition of the petitioner/respondent was allowed with a direction to respondent/appellant to consider the appointment of petitioner under Government Servant Dying in Harness Rules, 1974, within a period of three months.

2. Learend counsel for the appellants submitted that the Dying in Harness Rules, 1974 is not applicable on the daily wagers work charge employees. The learned Single Judge has dealt with this issue and has relied on a judgment of Allahabad High Court in

case of ["Meean Devi Chaudhary Vs. Chief Engineer, U.P. Public Works Department, Lucknow (2002) 2 UPLBEC 142] in which it has been held as under:-

> *"A woman cannot be denied appointment under this Rule on the alleged ground that her deceased husband was not working on regular basis."*

3. Learned counsel for the appellants relied on Para-5 of the judgment of Hon'ble Apex Court in the case of *"Haryana State Electricity Board Vs. Krishna Devi, (2002) 10 supreme Court Cases 246"*, which reads as under:-

*"It is well settled that employment on compassionate ground is given only on pure humanitarian consideration and no appointment can be claimed as a matter of right. The main object was to provide immediate financial help to the family of the deceased employee. It is also well settled that employment under compassionate ground cannot be made in absence of rules or instructions issued by the Government or any public authority."*

4. Here the Government Servants Dying in Harness Rules means the Rules Known as U.P. Recruitment of Dependents of Govt. Servants Dying in Harness Rules, 1974. Rule 2-A of the said Rules defines the Government Servant which reads as under:

***2. Definitions:*** *- In these rules, unless the context otherwise requires:*

*(a) "Government servant" means a Government servant employed in connection with the affairs of Uttar Pradesh who-*

*(i) was permanent in such employment; or*

*(ii) though temporary had been regularly appointed in such employment; or*

*(iii) though not regularly appointed, had put in three years continuous service in regular vacancy in such employment.*

*Explanation:- "Regularly appointed" means appointed in accordance with the procedure laid down for recruitment to the post or service, as the case may be.*

5. The case of the petitioner/respondent is that the husband of the petitioner/respondent though was not regularly appointed but he was holding the post of Chaukidar /Beldar for more than 12 years, therefore, the husband of the petitioner/respondent was a Government Servant within the meaning of Clause (iii) of Rule 2(a) of the U.P. Recruitment of Dependents of Govt. Servants Dying in Harness Rules, 1974.

6. Since the husband of the petitioner /respondent worked for more than 12 years, thus the impugned judgment passed by learned single judge does not suffer from any infirmity or illegality.

7. The special appeal is dismissed accordingly. No order as to costs.

**(B.C. Kandpal, J.)** 21.2.2006

**(P.C. Verma, J.)** 21-06-2006

Rajeev Dang